

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 37.52.210 pertaining to)	AMENDMENT
adjustment of subsidy payment)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On March 14, 2009, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on March 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.52.210 REVIEW OF SUBSIDY PAYMENT (1) A subsidized adoption agreement will be signed indicating the amount and duration of the subsidy. ~~Annual applications for subsidy and medical assistance will be sent to the adoptive parents by the department.~~ The subsidy established by this agreement may be modified upon request by the adoptive parents based upon changes in the needs of the child or upon a change in circumstances which affects the adoptive family. A change in the maximum allowable subsidy established by law is also an acceptable reason to seek a subsidy adjustment.

AUTH: ~~53-4-304~~ 42-10-104, MCA

IMP: ~~53-4-309, 53-4-311~~ 42-10-107, 42-10-108, 42-10-109, MCA

4. The Department of Public Health and Human Services (the department) is proposing an amendment to amend ARM 37.52.210. This rule now requires the department to send annual applications for subsidy and medical assistance to adoptive parents. The only reason for sending these annual applications is to provide a method by which adoptive parents may seek adjustment of their subsidies. Neither federal IV-E adoption assistance child welfare policy nor current Montana law requires annual renewals of adoption assistance agreements.

The department believes the present content of this rule may incorrectly lead adoptive parents to believe they may seek adjustment of subsidy amounts only on a yearly basis following receipt and completion of these annual applications. In fact, adoptive parents can seek adjustment of the subsidies at any time, based purely upon changes in the needs of the adoptive child or upon a change in circumstances which affects the adoptive family. A change in the maximum allowable subsidy payment is also an acceptable reason to seek a subsidy adjustment, but it does not have to be part of an annual application process.

The terms of subsidized adoptions are recorded by using a department form which is titled "Subsidized Adoption Agreement and Application/Change Notice for Medicaid" (Agreement). Provision I-C of the Agreement notifies adoptive parents that the amount of the monthly cash subsidy is based upon the needs of the child. It also informs adoptive parents that adjustments in cash assistance payments may be made with the concurrence of adoptive parent(s) and the department's program manager whenever the above-described changes may occur.

The rule that is proposed for amendment contradicts the language in the Agreement, and therefore may improperly influence adoptive parents to not seek subsidy adjustments as they are needed to assist them in caring for adoptive children. The department wishes to eliminate this inconsistency and make it clear to adoptive parents that their ability to request subsidy adjustments is not restricted to annual reviews of their existing agreements.

If this amendment is adopted as proposed, the department will discontinue sending annual applications for subsidy and medical assistance to adoptive parents.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 13, 2009. Comments may also be faxed to (406) 444-1970 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Rhonda Lesofski at the above address no later than 5:00 p.m., March 13, 2009.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 250

persons based on the estimated number of currently open adoption subsidy agreements with the state of Montana.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Bernie Jacobs
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State February 2, 2009.